

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #6	CCRB Case #: 201908620	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/30/2019 8:00 PM	Location of Incident: 170-14 130th Avenue	Precinct: 113	18 Mo. SOL 12/30/2020	EO SOL 8/16/2021	
Date/Time CV Reported Mon, 09/30/2019 3:57 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 09/30/2019 3:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Bryan Cullen	02427	945363	113 PCT
2. POM Daniel Leboff	1520	958803	113 PCT
3. POM Christophe Sanabria	13856	958048	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Dasilva	10050	966015	113 PCT
2. SGT Justin Dambinskas	3439	943130	113 PCT
3. POM Joel Diaz	25278	946466	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Bryan Cullen	Abuse: Sergeant Bryan Cullen threatened to seize § 87(2)(b)'s property.	
B.POM Daniel Leboff	Abuse: Police Officer Daniel Leboff threatened to seize § 87(2)(b)'s property.	
C.POM Daniel Leboff	Abuse: Police Officer Daniel Leboff searched § 87(2)(b)	
D.POM Daniel Leboff	Abuse: Police Officer Daniel Leboff searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On September 30, 2019, § 87(2)(b) submitted this complaint via the CCRB website.

At approximately 8:00 p.m. on June 30, 2019, § 87(2)(b) parked his vehicle in front of 170-14 130<sup>th</sup> Avenue in Queens. The vehicle had dark tinted windows and was parked in a loading zone for building residents only. Sgt. Bryan Cullen, PO Christopher Sanabria, PO Daniel Leboff, and PO Joel Diaz, of the 113<sup>th</sup> Precinct, approached § 87(2)(b)'s vehicle. § 87(2)(b) identified himself as the vehicle owner. Though he provided his driver's license, he refused Sgt. Cullen's request for his registration and insurance card. In response, Sgt. Cullen and PO Leboff both stated that they would tow § 87(2)(b)'s vehicle (**Allegations A and B: Abuses of Authority:** § 87(2)(g), § 87(2)(b)) agreed to provide his registration and insurance. When he opened his car door, PO Leboff asked how much marijuana was in the vehicle and if there was anything illegal in the vehicle. § 87(2)(b) denied having marijuana and said that he would call his attorney. PO Leboff stated that they would tow § 87(2)(b)'s vehicle (**within Allegation B**). PO Leboff reached into § 87(2)(b)'s pocket and removed his car keys (**Allegation C: Abuse of Authority:** § 87(2)(g)). PO Leboff opened the trunk of § 87(2)(b)'s vehicle where there were fireworks (**Allegation D: Abuse of Authority:** § 87(2)(g), § 87(2)(b)). § 87(2)(b) was arrested for unlawful sale of fireworks, unlawful possession of fireworks, and having an unlawfully tinted windshield (BR 01). § 87(2)(a) 160.50, § 87(2)(g), § 87(2)(c) (BR 02), § 87(2)(g), § 87(4-b)

It was confirmed that PO Leboff received a CD under IAB Log number 2019-37857(case number og-2019-17775) for his lost memo book. As such, no OMN allegation was noted.

The investigation obtained BWC footage (BR 03 – 08) and cell phone footage (BR 09). An attorney was consulted for this case.

### Findings and Recommendations

**Allegation (A): Abuse of Authority: Sergeant Bryan Cullen threatened to seize § 87(2)(b)'s vehicle.**

**Allegation (B): Abuse of Authority –Police Officer Daniel Leboff threatened to seize § 87(2)(b)'s vehicle.**

It is undisputed that on June 30, 2019, at approximately 8:00 p.m., § 87(2)(b) was parked in a loading zone in front of 170-14 130<sup>th</sup> Avenue in Queens. There were dark tints on all his vehicle windows. He was parked in a loading zone for building residents. § 87(2)(b) was not a resident of this building. Sgt. Cullen, PO Leboff, PO Sanabria, and PO Diaz approached § 87(2)(b) who acknowledged that he was the vehicle owner and was in possession of the keys. When Sgt. Cullen requested his vehicle registration and insurance card, § 87(2)(b) refused to provide them. Both Sgt. Cullen and PO Leboff told § 87(2)(b) that they would tow their vehicle. § 87(2)(b) walked to the front passenger seat of his vehicle and retrieved his vehicle registration and insurance. PO Leboff asked how much marijuana was in the vehicle. § 87(2)(b) told PO Leboff that he lied about smelling marijuana. PO Leboff repeatedly asked if there was anything illegal in the vehicle. § 87(2)(b) said that he was going to call his attorney. PO Leboff said that the officers would tow § 87(2)(b)'s vehicle because it was illegally parked.

At 49 seconds into PO Leboff's BWC (BR 03), PO Leboff and PO Sanabria exited their vehicle and approached a vehicle with dark black window tints on all its windows. Behind the vehicle were four black males, one of whom was § 87(2)(b) identified himself as the vehicle owner and confirmed that he had the keys. He provided his driver license to Sgt. Cullen. At the 4:55 mark, § 87(2)(b) declined to provide his insurance card and vehicle registration to Sgt. Cullen. Sgt. Cullen

and PO Leboff told § 87(2)(b) that they would tow his vehicle. § 87(2)(b) walked to the front passenger seat and agreed to provide these documents. When he opened his vehicle door, PO Leboff asked how much marijuana was in the vehicle and said it smelled like marijuana. § 87(2)(b) denied that it smelled like marijuana. PO Leboff repeatedly asked if there was anything illegal in the vehicle. § 87(2)(b) said that he was going to call his attorney. At the 6:00 mark, PO Leboff repeated that they were going to tow the vehicle because it was illegally parked.

§ 87(2)(b) testified that he was legally parked because he was in a loading zone. He believed that his tinted windows, which would not have been legal in New York State, were legal because his vehicle was registered in Maryland.

PO Leboff testified that § 87(2)(b)'s windows were illegally tinted, and he was parked in a fire lane specifically designated as a resident loading zone. Officers discussed towing § 87(2)(b)'s vehicle because it was in a fire lane. PO Leboff did not remember saying this himself.

Sgt. Cullen testified that said the vehicle could be towed because it was illegally parked and had illegal window tints.

A Google Maps screen capture of the driveway at 170-14 130<sup>th</sup> Avenue (BR 10) showed that § 87(2)(b) was parked in a 20-minute loading zone for building residents.

When an officer observes an unoccupied vehicle that is illegally parked or in violation of some provision of the NYC Traffic Rules, they may have such vehicle towed. NYPD Patrol Guide Procedure 209-07 (BR 11).

§ 87(2)(b) § 87(2)(b) § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (C): Abuse of Authority: Police Officer Daniel Leboff searched § 87(2)(b)**  
**Allegation (D): Abuse of Authority: Police Officer Daniel Leboff searched the vehicle in which § 87(2)(b) was an occupant.**

At 6:00 minute mark into PO Leboff's BWC (BR 03), PO Leboff stated that § 87(2)(b)'s vehicle smelled like marijuana. § 87(2)(b) denied that there was anything illegal in the vehicle. PO Leboff repeatedly asked if there was anything illegal inside. PO Leboff said that he was going to search § 87(2)(b)'s vehicle. § 87(2)(b) repeatedly stated that he did not consent to being searched. PO Leboff reached into § 87(2)(b)'s shorts pockets and removed the vehicle keys. PO Leboff opened the trunk of the vehicle, which revealed a collection of fireworks. PO Sanabria and Sgt. Cullen handcuffed § 87(2)(b) and transported him to the 113<sup>th</sup> Precinct stationhouse. PO Leboff drove § 87(2)(b)'s vehicle to the stationhouse.

§ 87(2)(b) testified that there was no marijuana smell during this incident. He did not have any marijuana on his person or in his vehicle. He believed that the officers falsely claimed that they smelled marijuana to justify searching his vehicle.

PO Leboff testified that when he first approached § 87(2)(b)'s vehicle, from approximately ten



marijuana. Officers are permitted to search a vehicle when they detect the odor of marijuana as per People v. Chestnut, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 13).
- Sgt. Cullen has been a member-of-service for 12 years and has been a subject of 21 allegations in eleven cases, one of which was substantiated.
  - Case #2013029277 involved a substantiated allegation of refusal to provide name/shield number. The Board recommended that he receive instructions. The NYPD did not impose any penalty.
- PO Leboff has been a member-of-service for five years and has been a subject of 14 allegations in four cases, none of which were substantiated.

#### **Mediation, Civil and Criminal Histories**

- This case was not eligible for mediation.
- § 87(2)(b)
- As of June 29, 2020, the NYC Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 15).

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Squad 6

Investigator: e/Mac Muir      Supervising Investigator Mac Muir 09/08/20  
Signature      Print Title & Name      Date

Squad Leader: Jessica Peña      IM Jessica Peña      9/14/2020  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date